

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

**EZEQUIEL OLIVARES ABARCA, et al,  
individually and on behalf of all those similarly  
situated,**

and

**WILLIAM SMITH, on behalf of himself and all  
others similarly situated, and on behalf of the  
general public,**

and

**BRIAN VESTER and JOEL MORALES,  
individually and on behalf of all others  
similarly situated,**

and

**DANIEL BRYANT, individually and on behalf  
of all others similarly situated,**

**Plaintiffs,**

**vs.**

**WERNER ENTERPRISES, INC., et al.,**

**Defendants.**

**8:14CV319**

**ORDER**

**8:15CV287**

**ORDER**

**8:17CV145**

**ORDER**

**8:20CV227**

**ORDER**

This matter is before the Court after review of the Joint Status Report and Joint Motion to Refine Class Definitions and Extend Progression Order Deadlines (Filing No. 391 in the Lead Case). After review of the parties' motion,

**IT IS ORDERED** that the Joint Status Report and Joint Motion to Refine Class Definitions and Extend Progression Order Deadlines (Filing No. 391 in the Lead Case) is granted as set forth below:

- 1) The Court approves the parties' agreement that the Rule 23(b)(3) class definitions for the Nebraska and California classes should be modified to exclude drivers who did not work for Werner at any point from June 4, 2010 – July 14, 2023 and were hired after July 14, 2023, so as to provide an end-date for class membership and to eliminate the need for multiple supplemental notices to new class members.
- 2) On or before **August 4, 2023**, Werner will produce a class list ("2023 Class List") to counsel for the Abarca/Smith Plaintiffs ("Class Counsel") identifying all

individuals who now fall within the definition of the Nebraska and/or California cases, were hired on or before July 14, 2023, and were not on the 2018 Class List (collectively, the “New Class Members”).

- 3) On or before **August 25, 2023**, Werner will produce supplemental class data for all categories of class data previously produced, including trip data, pay data, check detail, check header, paid trip detail, stop data, messaging data, and log data, for all Class Members, including all such data generated through the date of that production.
- 4) On or before **September 6, 2023**, Class Counsel shall send notice to the Class Members who were not on the 2018 Class List (“2023 Notice”). The form and content of the 2023 Notice and the process of providing the 2023 Notice shall be substantially similar to the Court-approved notice sent to class members in 2018. The parties shall have **14-days** to submit a joint stipulation and proposed order for approval of the 2023 Notice plan and documents. Consistent with the Court’s Order on Court-Supervised Notice, New Class Members will have **60-days** from the Mailing date to elect to be excluded from this lawsuit (the “Opt Out Deadline”).
- 5) Within **30-days** after the 2023 Opt Out Deadline, (1) Defendants shall supplement the data production to produce any updated records generated for class members since the date of the production and through the 2023 Opt Out Deadline; and (2) Plaintiffs’ Counsel shall file with the Court a list of all New Class Members who timely requested exclusion from either Class (the “2023 Opt Out List”).
- 6) A planning conference to discuss case progression, dispositive motions, the parties’ interest in settlement, and the trial and pretrial conference settings will be held with the undersigned magistrate judge on **December 13, 2023**, at **10:00 a.m.** by telephone. Counsel shall use the conferencing instructions assigned to this case to participate in the conference. (Filing No. 206 in the Lead Case).
- 7) All current case progression deadlines (Filing No. 383 in the Lead Case) that will expire prior to the planning conference (i.e., written discovery, motion to compel, expert identification/disclosures, depositions, motions to dismiss, and summary judgment) are suspended, and will be reset during the planning conference as necessary.

Dated this 18<sup>th</sup> day of July, 2023.

BY THE COURT:

s/Michael D. Nelson  
United States Magistrate Judge